

TEMPORARY SUSPENSION ORDER #J-16-002-S1

RE: IN THE MATTER OF
UPSHAW PHARMACY
(PHARMACY LICENSE #28206)

BEFORE THE TEXAS STATE
BOARD OF PHARMACY

On this day came on to be considered by the Disciplinary Panel of the Texas State Board of Pharmacy (Board) the matter of the Petition for Temporary Suspension of pharmacy license number 28206, issued to Upshaw Pharmacy (Respondent), 7125 West Fuqua Road, Missouri City, Texas 77489, pursuant to § 565.059 of the Texas Pharmacy Act (Pharmacy Act), TEX. OCC. CODE ANN., Title 3, Subtitle J.

Patricia Robinson, Individual Owner, on behalf of Respondent, and Franklin Hopkins, Legal Counsel for Respondent, were in attendance. Caroline Hotchkiss represented Board staff. Kerstin Arnold served as General Counsel to the Disciplinary Panel. The following Board members served as the Disciplinary Panel: Jeanne D. Waggener, R.Ph.; Dennis F. Wiesner, R.Ph.; and Phyllis A. Stine.

The Disciplinary Panel determines that Respondent, by continuation in the operation of the pharmacy, would constitute a continuing threat to the public welfare, and that pharmacy license number 28206 issued to Respondent shall be temporarily suspended in accordance with § 565.059 of the Pharmacy Act. The Disciplinary Panel makes this finding based on the following evidence and/or information presented at the February 3, 2016, Hearing on Temporary Suspension of License of Respondent:

1. On or about August 23, 2012, Upshaw Pharmacy, 7125 West Fuqua Road, Missouri City, Texas 77489, was issued Texas pharmacy license number 28206.
2. Patricia Robinson is the individual owner of Upshaw Pharmacy.
3. As the owner of a pharmacy, Ms. Robinson has responsibility for all administrative and operational functions of the pharmacy.

4. A pharmacy is responsible for any violations in the practice of pharmacy by an owner or employee of the pharmacy.
5. The pharmacy license of Upshaw Pharmacy was in full force and effect at all times and dates material and relevant to this Order.
6. The license of Upshaw Pharmacy is current through August 31, 2016.
7. All jurisdictional requirements have been satisfied.
8. On or about October 13, 2014, a Board compliance officer conducted an inspection of Upshaw Pharmacy. During the inspection, the compliance officer noted concerns with whether the pharmacists were exercising appropriate corresponding responsibility. She determined that pharmacists at Upshaw Pharmacy were dispensing numerous prescriptions for “Houston cocktail-like” drugs, including hydrocodone, that presented red flags that the prescriptions were non-therapeutic. The compliance officer also advised the pharmacy to cease the practice of dispensing these types of prescriptions and to dispense only prescriptions for legitimate medical purposes.
9. On or about January 21, 2015, the Board informed Upshaw Pharmacy that following the compliance inspection on October 13, 2014, it was determined that the pharmacy dispensed controlled substances, including hydrocodone, carisoprodol, and alprazolam, pursuant to prescriptions which may have not been issued for a legitimate medical purpose, due to the pharmacy’s pattern of purchases and sales of these controlled substances. No disciplinary action was taken with regard to this matter.
10. Between on or about October 6, 2014, and October 15, 2015, Nikkol Francis Denson and George Jackson, while acting as pharmacist-in-charge and a pharmacist of Upshaw Pharmacy, dispensed controlled substances and dangerous drugs to patients pursuant to approximately 5,471 invalid prescriptions, which accounts for 87% of the pharmacy’s total dispensed prescriptions* in this time period. The prescriptions were issued from approximately three clinics by four physicians (Ronald Charles†, M.D., Syed Jamal, M.D., George Kiss, M.D., and Cynthia McNeil, M.D.) and five mid-level nurse practitioners (Tamara Welsh, Belanie Peavy, Nativida Chapman, Kathy Macnak, and Angela Obinna) acting under a physician’s delegated authority. The prescriptions were written for hydrocodone/APAP 10/325 mg (a Schedule II controlled substance) and carisoprodol 350 mg (a Schedule IV controlled substance) for the purported treatment of pain, and additional prescriptions for various ancillary drugs and products, mostly anti-inflammatories, vitamins and stool softeners. These prescriptions were invalid because they had not been issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice, i.e., the prescribed prescription drugs were not necessary or required for a valid therapeutic purpose, the patients receiving such

*Approximately 6,284 prescriptions total prescriptions dispensed by Upshaw Pharmacy from October 6, 2014, to October 15, 2015.

†On June 23, 2015, the Texas Medical Board entered an Order of Temporary Restriction against Dr. Charles’ restricting him from treatment of chronic pain and disallowing his delegative authority to mid-level practitioners.

prescriptions received inadequate or improper medical treatment, and/or the prescribers failed to use medical reasoning in issuing the prescriptions. Ms. Denson and Mr. Jackson should have known the prescriptions were invalid based on these red flag factors:

- a. Consistent large quantities of controlled substances prescribed to patients;
- b. The number of prescriptions authorized on a daily basis by the practitioner;
- c. A disproportionate number of patients of the practitioner receiving controlled substances;
- d. An equal number of dangerous drugs to controlled substances issued by the prescribers and dispensed to patients; and
- e. The geographic distance between the practitioner and the patient or between the pharmacy and the patient.

Subsequent to any proceedings involving the conduct described above, the Board may take additional disciplinary action on any criminal action taken by the criminal justice system based on the same conduct described in the allegations above. However, Respondent shall be provided all rights of due process should the Board initiate such disciplinary action subsequent to the conclusion of the criminal proceedings.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the Board does hereby ORDER that:

- (1) Pharmacy license number 28206 held by Respondent shall be, and such license is hereby temporarily suspended. Said suspension shall be effective immediately and shall continue in effect, pending a contested case hearing on disciplinary action against the suspended license to be held at the State Office of Administrative Hearings not later than ninety (90) days after the date of this Order. During the period of suspension, Respondent shall:
 - (a) not operate as a pharmacy in this state in any manner that would allow receipt, distribution, or dispensing prescription drugs during the period said license is suspended; and
 - (b) shall surrender to the Board said license and any renewal certificate pertaining to said license number as specified by Board staff.
- (2) Respondent shall immediately transfer all prescription drugs to a secured licensed pharmacy or other entity with the authority to legally possess prescription drugs, not later than February 10, 2016, and to immediately thereafter provide documentation of such transfer to the Board.

- (3) If Respondent does not immediately and fully comply with the terms of paragraph (2) above, the Board shall have the authority to remove all dangerous drugs from Respondent's establishment for the purpose of either transferring such drugs to a secured licensed pharmacy or other entity with the authority to legally possess dangerous drugs set forth in § 483.041(c) of the Texas Dangerous Drug Act, or destroying such drugs as in § 483.074 of the Texas Dangerous Drug Act.
- (4) Respondent shall be responsible for all costs relating to compliance with the requirements of this Order.
- (5) Respondent shall allow Board staff to directly contact Respondent on any matter regarding the enforcement of this Order.
- (6) Failure to comply with any of the requirements in this Order constitutes a violation and shall be grounds for further disciplinary action. The requirements of this Order are subject to the Texas Pharmacy Act, TEX. OCC. CODE ANN., Title 3, Subtitle J (2015), and Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2016).

Passed and approved at the Temporary Suspension Hearing of the Disciplinary Panel of the Texas State Board of Pharmacy on the 3rd day of February, 2016.

And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 3rd day of February, 2016.


MEMBER, TEXAS STATE BOARD OF PHARMACY


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